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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/841,301      | 04/24/2001  | Scott Lee Wellington | 5659-01800 TH1942   | 4730             |

7590 04/17/2003

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EXAMINER

KRECK, JOHN J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3673     |              |

DATE MAILED: 04/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                        |                               |                                   |
|------------------------|-------------------------------|-----------------------------------|
| <b>Advisory Action</b> | Application No.<br>09/841,301 | Applicant(s)<br>WELLINGTON ET AL. |
|                        | Examiner<br>John Kreck        | Art Unit<br>3673                  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**THE REPLY FILED 25 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.**  
Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

a)  The period for reply expires 3 months from the mailing date of the final rejection.

b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will not be entered because:

(a)  they raise new issues that would require further consideration and/or search (see NOTE below);

(b)  they raise the issue of new matter (see Note below);

(c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.  
8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).  
10.  Other: See Continuation Sheet

  
**DAVID BAGNELL**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**

Continuation of 2. NOTE: the proposed amendments to claims 1608, 1647, and 5400 change the scope of the claims by adding a new limitation of "positioned in heater wells"; this limitation has not been previously considered during prosecution, and thus requires further consideration and/or search and the proposed amendments do not simplify the issues for appeal. The proposed amendment also raises issues of whether the dependent claims are definite e.g.: can a "surface burner" (claim 1612) be positioned "in heater well[s]".

Continuation of 5. does NOT place the application in condition for allowance because: does NOT place the application in condition for allowance because: Applicant argues that the Tsai reference fails to teach the steps of "providing heat from one or more heaters" and "allowing heat to transfer from one or more heaters". Applicant argues that the definition of heater: "any system configured to generate heat in a well or a near wellbore region" excludes the heat systems taught by Tsai. Tsai teaches both the injection of hot air (e.g. col. 4, lines 49-70) to heat a near wellbore region (similar to the "surface burner" claimed in claim 1612) and subsequent in-situ combustion (e.g. col. 5, line 52). The plain language of applicant's definition of the term "heater" does not exclude either injection of hot air or fireflood. It is noted that applicant's claimed species of heater also include embodiments which heat the formation by in-situ combustion ("natural distributed combustor"). Applicant's characterization of examiner's remarks as acquiescence that Tsai fails to teach "any system configured to generate heat in a well or a near wellbore region" is unfounded: the examiner's remarks were a simply restatement of applicant's arguments. Tsai clearly teaches a system configured to generate heat in a well or near wellbore region. The information disclosure statements filed 3/19/03 have not been considered: an information disclosure statement filed after final rejection must be accompanied by a statement as specified in 37 CFR 1.97(e). The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered. .

Continuation of 10. Other: Applicant's remarks considering the double patenting rejection have been considered. In the interest of simplifying prosecution, the double patenting rejections will be suspended until claims have been found allowable over the prior art. .